IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.179 of 2001

Judgement reserved on: 18.12.2007

Date of decision: 24.12.2007.

State of H.P **…….Appellant**

Vs.

Daulat Ram **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant **:** **Mr. M.S. Chandel, Advocate General with Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondent **:** **Mr. D.N. Ronta, Advocate.**

Kuldip Singh, Judge.

The State is in appeal against the award dated 29.4.2000 passed by learned Addl. District Judge, Shimla in L.Ref. No.7-S/4 of 1989, awarding Rs.1,64,700/-along with other statutory payments, interest for acquiring land measuring 22 biswas of the respondent.

2. The facts in brief are that State for acquiring the land of the respondent, comprised in khasra Nos.276/1, 351/1, 406/1, and 443/1 measuring 1-2 Bighas, situated in Chak Kaljar, Tehsil Theog, District Shimla, for public purpose of construction of Matiana-Mahori Road in Tehsil Theog issued notification under Section 4 of the Land

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

Acquisition Act, 1894 (for short 'Act') which was published in Gazette on 3.8.1985. The Land Acquisition Collector (for short 'Collector') made the award on 19.1.1988 and awarded compensation as per the classification of the land. The owner was not satisfied with the award of the Collector, therefore, he filed reference petition under Section 18 of the Act. The respondent claimed market value of the acquired land as per rates prevailing in adjacent Kalinda Chak. In the reference petition following issues were framed:-

1) Whether the petitioner is entitled to enhancement of compensation as claimed in the petition?...OPP

2) Whether the petitioner is entitled to interest as claimed?....OPP

3) Relief.

3. The learned Addl. District Judge decided the reference petition vide award dated 27.9.1991 which was assailed by way of appeal in this Court. On 31.5.1999, a Division Bench of this Court allowed the appeal and remitted the case to the Reference Court with a direction to give opportunity to the parties to adduce evidence afresh, consider the same in the light of the law laid down by the apex Court and then decide the compensation accordingly. The learned Addl. District Judge after remand, decided the reference vide award dated 29.4.2000 and assessed the market value of the acquired land, at Rs.1,64,700/-, the learned Addl. District Judge has also awarded other statutory amounts, interest as per impugned award, hence this appeal.

4. I have heard Mr. M.S. Chandel, learned Advocate General for the State and Mr. D.N. Ronta, learned counsel for the respondent. It has been submitted on behalf of the State that learned Addl. District Judge has awarded compensation to the respondent on the higher side. The market value has been assessed on wrong basis. The material on record has been misinterpreted. The respondent is not entitled to enhancement of compensation over and above what has been awarded by the Collector. The learned counsel for the respondent has supported the impugned award and has submitted that in RFA No.19 of 2002 decided on 23.7.2007, a learned Single Judge of this Court has assessed the market value at the rate of Rs.2,16,000/- per bigha for Bakhal Doem land. The land involved in RFA No.19 of 2002 was also acquired for construction of Matiana Mahori road vide notification dated 3.8.1985 issued under Section 4 of the Act as in the present case.

5. PW-1 Daulat Ram has stated that his land in village Kaljar was acquired for construction of Matiana Mahori road. In Chak Kaljar no land was sold for the last 30 years, more particularly, in those villages from where the road was constructed. Chak Kaljar is adjacent to Chak Kalinda. The quality of land in Chak Kaljar is superior to the land of Chak Kalinda. There is a small township at a distance of 250 meters from Chak Kaljar and Chak Kalinda. PW-2 Joginder Singh Patwari has proved on record Khaka Dasti Circle Ex.PA, five years average sale price of land in Chak Kalinda Ex.PB and average five years sale price of land in Chak Kaljar

Ex.PC. After remand Daulat Ram again appeared as PW-3 and has stated that he used to grow cabbage and pea crops on the acquired land and earn Rs.40,000/- per bigha from the acquired land. PW-4 Hem Chand, PW-5 Keshwa Nand and PW-6 Baghat Ram have also stated regarding per bigha yield of cabbage and pea crops in the area. PW-7 Gurdas Ram has stated that he has purchased one biswa land in Kaljar Chak from Nekha for Rs.9,500/- vide sale deed Ex.PW-7/A. The market value of land in that area was from Rs.18,000/- to Rs.30,000/- per biswa but he has purchased one biswa land for Rs.9,500/- because of his good relations with Nekha. No sale deeds were produced by appellant for assessing the market value of the acquired land.

6. The learned Addl. District Judge has noticed that sale deed Ex.PW-7/A is of one biswa land only and is a solitary sale instance and therefore, he declined to assess the market value of the acquired land on the basis of sale deed Ex.PW-7/A. The learned Addl. District Judge has relied ***State of Haryana vs. Gurcharan Singh and another AIR 1996 Supreme Court 106*** for assessing the market value of 13 Biswas land out of the acquired land on the basis of annual yield and has assessed the yield of 13 Biswas land out of acquired land at Rs.18,000/- per annum per bigha and after applying multiplier of 12 has determined the market value of 13 Biswas land out of the acquired land at Rs.2,16,000/- per bigha or Rs.10,800/- per biswa. The acquired land is 22 Biswas but, learned Addl. District Judge has assessed the market value of the acquired

land with respect to 13 Biswas, Bakhal Awal and Bakhal Doem, at Rs.10,800 x 13 = Rs. 1,40,400/- and with respect to 9 Biswas which is Ghasni at Rs. 2700 x 9 = Rs.24,300/-. The total market value of the acquired land thus comes to Rs.1,40,400 + Rs.24,300/- = Rs.1,64,700/-.

7. The learned counsel for the respondents has submitted that in RFA No.19 of 2002 decided on 23.7.2007 the land was also acquired vide notification dated 3.8.1985 issued under Section 4 of the Act for the same road as in the present case. This fact has not been denied on behalf of the State. The learned Single Judge in RFA No.19 of 2002 has approved the assessment made by learned Addl. District Judge at Rs.2,16,000/- per bigha. Therefore, the present case so far 13 Biswas land out of acquired land is concerned is covered by the judgment dated 23.7.2007 passed in RFA No.19 of 2002 wherein market value of the land has been approved at Rs.2,16,000/- per bigha or Rs.10,800/- per biswa. The learned Addl. District Judge after assessing the market value of Bakhal Awal and Bakhal Doem land out of acquired land at Rs.10,800/- per Biswa has rightly assessed the market value of 9 Biswas of Ghasni land out of acquired land at Rs.2700/- per Biswa. The market value of Ghasni land as assessed by learned Addl. District Judge is also just and reasonable. The State has failed to point out any illegality in the impugned award. The other statutory payments and interest have also been rightly awarded by learned Addl. District Judge in the impugned award.

8. No other point was urged.

9. The result of the above discussion, appeal fails and is accordingly dismissed.

(Kuldip Singh)
Judge

December 24, 2007
(sks)